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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,368	09/24/2001	Helen Ann Biddiscombe	BIDD3001D/JDB	6339

23364 7590 08/04/2003

BACON & THOMAS, PLLC
625 SLATERS LANE
FOURTH FLOOR
ALEXANDRIA, VA 22314

EXAMINER

ZIRKER, DANIEL R

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 08/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED:

Below is a communication from the EXAMINER in charge of this application
COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 707.07(f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search. (see NOTE below);
 - (b) ☐ they raise the issue of new matter. (see NOTE below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE:

4. ☐ Applicant's reply has overcome the following rejection(s): _____
5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached NOTE
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):
- Claim(s) allowed: None
- Claim(s) objected to: _____
- Claim(s) rejected: 13, 15-36
- Claim(s) withdrawn from consideration: _____
9. ☐ The proposed drawing correction filed on _____ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
11. ☒ Other: PTO 892

DANIEL ZIRKER
PRIMARY EXAMINER
GROUP 1900-

Daniel Zirker

NOTE

1. With respect to applicant's after final response, the following observations are deemed to be pertinent. Initially it is noted that (Response, page 5, top paragraph) applicant is claiming a genus of articles which the Examiner believes is either disclosed or made obvious by the relied upon prior art, not a process for preventing curling. Additionally, it is further noted that applicant's claims read upon a symmetrical film, i.e., a film having a thickness ratio of 1:1.

2. The Examiner contests applicant's remarks found particularly at page 6, first complete paragraph and at page 7, lines 6-8. The claims do not "require that all of the layers which are co-extruded onto the core layer must be non-voided", i.e. only one layer on each core surface is so required by applicant's claims i.e., the intermediate layer if more than one layer is present. That is, the outer skin layer or layers are not required to be non-voided, applicant's remarks to the contrary notwithstanding.

3. Applicant's remarks concerning the alleged comparison in his specification is not believed to be pertinent since it is not made against the closest prior art, i.e. that relied upon by the Examiner (Response, page 8).

4. The Examiner further notes that Carespodì is, except for the absence of an extruded or co-extruded film, almost an

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anticipation of the (i.e. a 1:1 thickness ratio) film claimed by applicant, his remarks to the contrary (Response, page 9, first complete paragraph) notwithstanding. As to applicant's amendments to claim 13 which now define the film as being co-extruded, although the Examiner could have treated this to be a new issue, it was not since this limitation is found throughout both the specification and in applicant's other independent claim. Additionally, this product-by-process limitation has not been shown on the record to produce a patentably distinct article from, e.g. those films which are adhered by adhesive bonding such as in Carespodì. In summary, the Examiner has again relied upon Carespodì for its teaching of how to prevent curling, such as has been set forth, e.g. at column 5, lines 29-35.

5. The Examiner again repeats his contention that 35 U.S.C. § 101 double patenting still exists for claim 28 as against claim 8 of Biddiscombe, applicant's comments to the contrary (Response, page 10) notwithstanding. The proper test is whether or not the two claims anticipate each other, not whether or not they may be of differing scope.

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6. The Examiner has made of record three references which have been relied upon during prosecution since they do not appear in the electronic file wrapper maintained by the PTO which contain the correspondence in this particular application.

DRZirker:cdc

(703) 308-0031

July 31, 2003